United States Bankruptcy Court
Northern District of Illinois
Eastern Division

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Bankruptcy Caption: In re WILLIAM JOHN HAVRANEK

Bankruptcy No. 97 B 30745

Date of Issuance: MARCH 13, 2000

Judge: Ginsberg

Appearance of Counsel:

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UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In Re:	)	**Chapter 7**
	)	
William Havranek,	)	**Case No. 97 B 30745**
	)	
Debtor.	)	**Hon. Robert E. Ginsberg**
----------	)	
Anthony Manna,	)	
Plaintiff,	)	
	)	
v.	)	**Adv. No. 98 A 00166**
	)	
William Havranek,	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

Anthony Manna filed a complaint against William Havranek ("the Debtor") to have this court determine whether any debt that the Debtor might owe Manna is dischargeable under section 523(a)(6) of the Bankruptcy Code. 11 U.S.C. sec. 523(a)(6). The issue is whether Havranek's conduct was willful and malicious, as that phrase is defined under the Bankruptcy Code. The parties agreed to have the court resolve that issue on the basis of stipulations of fact. Based on the record before the court, the court finds that the Debtor's obligation to Manna, if any, is dischargeable.

Findings of Fact

On the evening of June 10, 1997, the Debtor and Jeffrey Zeitler, a friend of the Debtor, were driving around Elk Grove Village, Illinois. While the Debtor and Zeitler were driving around, they shot paint ball pellets from a paint pellet gun at inanimate objects, such as mailboxes, signs, and statuary. Unfortunately, one of those paint pellets struck Manna in his left eye and

injured him.

When he was hit by the paint pellet, Manna was sitting in the front of his house talking on the telephone. After the pellet hit him, the police and an ambulance were called to his home, and Manna was taken to the hospital where his eye injury was treated. The police investigated the shooting. Manna told the police that he did not see or hear anyone at the time of the shooting. No-one was arrested or identified as a suspect in the paint pellet shooting at that time.

On October 16, 1997, the Elk Grove Village Police Department contacted Havranek and Zeitler, and asked them to come to the station to answer questions about paint ball shootings. In his statement to the police, Havranek stated that he did not specifically remember shooting the paint pellet gun at Manna's home. He further stated that he did not intend that people be hit with the paint pellets.

On October 16, 1997, after he gave his statement to the police, Havranek was arrested and charged with reckless conduct under Illinois law, 720 ILCS 5/12-5. On February 18, 1998, Havranek (and Zeitler) pled guilty to the charge of reckless conduct. He was sentenced to supervision, a $250 fine and 10 days of community service.

On October 7, 1997, Havranek filed his chapter 7 petition. Havrankek's schedules, filed in accordance with Federal Rule of Bankruptcy Procedure 1007, did not list Manna as a creditor. On December 23, 1997, after he received Manna's Notice of Attorney's Lien dated December 16, 1997, Havranek amended his schedules to include Manna as a creditor. On January 29, 1998, Manna filed the instant adversary complaint.

Jurisdiction

This court has jurisdiction over this matter under 28 U.S.C. §1334(b) as a matter arising under §523(a)(6) of the Bankruptcy Code. This matter is a core proceeding under 28 U.S.C.

§157(b)(2)(I) as a matter relating to the dischargeability of a particular debt. Venue is proper pursuant to 28 U.S.C. § 1409(a).

Conclusions of Law

Section 523(a)(6) of the Bankruptcy Code provides that:

> A discharge under section 727 ... of this title does not discharge an individual debtor from any debt–
> (6) for willful and malicious injury by the debtor to another entity or to the property of another entity.

Manna contends that Havranek's obligation to him for any possible injury he suffered as a result of being hit by the paint pellets is not dischargeable under section 523(a)(6) of the Bankruptcy Code because the Debtor's conduct was willful and malicious. The Debtor admits that his conduct was reckless since he pled guilty to a charge of reckless conduct, but contends that reckless conduct is not the same as willful and malicious conduct.

Exceptions to a bankruptcy discharge are narrowly construed in favor of debtors to ensure that an honest debtor can use the provisions of Chapter 7 of the Bankruptcy Code to receive a financial fresh start. *See Matter of Paeplow*, 972 F.2d 730 (7th Cir. 1992); *see also First Nat'l Bank of Red Bud v. Kimzey*, 761 F.2d 421 (7th Cir. 1985). The party seeking to establish that a debt is nondischargeable under section 523 of the Bankruptcy Code bears the burden of proof. *In re Martin*, 698 F.2d 883, 887 (7th Cir. 1983); *In re Grynevich*, 172 B.R. 888 (Bankr. N.D. Ill. 1994). The burden of proof under section 523 of the Bankruptcy Code is by a fair preponderance of the evidence standard. *Grogan v. Garner*, 498 U.S. 279, 111 S. Ct. 654 (1991). Thus, in this proceeding, Manna bears the burden of proving by a fair preponderance of the evidence that Havranek's obligations to him fall within the exception to dischargeability set out in section 523(a)(6) of the Bankruptcy Code.

To be nondischargeable under section 523(a)(6) of the Bankruptcy Code, a debt must arise out of conduct that is both willful and malicious. In *Kawaauhau v. Geiger*, 523 U.S. 57, 118 S.Ct. 974, 140 L.Ed.2d 90 (1998), the United States Supreme Court set forth the standards that conduct must meet to be willful under section 523(a)(6) of the Bankruptcy Code. The plaintiffs in *Kawaauhau* argued that a medical malpractice judgment against the doctor who was a physician should be nondischargeable under section 523(a)(6). The Court held that "nondischargeability takes a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury." *Id.* at 977. The Court suggested that "willful" requires the debtor to intend the consequences of the action, not simply the action itself, akin to an intentional tort. *Id.* at 977. The Supreme Court stated:

> "We hold that debts arising from recklessly or negligently inflicted injuries do not fall within the compass of section 523(a)(6)." *Id.* at 978.

Thus, the Court concluded that the doctor's deliberate choice to use less effective treatment to reduce costs was not a willful and malicious act because the doctor did not have an actual intent to cause injury, and the judgment was dischargeable.

To prove that a debt is not dischargeable because it arises from a willful and malicious injury by the debtor, Manna must prove, by a preponderance of the evidence, that Havranek shot him with the paint pellet gun with the intent to injure him. The evidence presented by the parties does not prove that Havranek intended to injure Manna. Indeed, it shows instead that Havranek did not know who Manna was at the time that he shot him with the paint pellet gun. In addition, while the Debtor's recall is at times uneven, this Court concludes, as he testified at his deposition, that Havranek only intended to shoot at inanimate objects, including Manna's house. However, Havranek did not intend the consequences of his actions. Havranek did not intend to injure

Manna. Manna has not introduced any evidence to contradict Havranek's testimony in that regard and has not offered any evidence which tends to show that Havranek intended to hurt Manna. Havranek acted recklessly in shooting a paint pellet gun in a residential neighborhood. But recklessness is not enough to make any debt the Debtor owes to Manna arising out of the paint pellet shooting nondischargeable. Reckless or negligent conduct is not sufficient to find a debt nondischargeable under section 523(a)(6) of the Bankruptcy Code. *Kawaauhau* at 978. Thus, this court finds that the debt, if any, arising out of the paint pellet shooting, which Havranek owes to Manna, is dischargeable.[1]

Conclusion

For the reasons stated above, the court finds that any debt Havranek might owe to Manna for any possible injury he suffered as a result of being hit by the paint pellets is dischargeable under section 523(a)(6) of the Bankruptcy Code. 11 U.S.C. sec. 523(a)(6). Judgment on the complaint is entered in favor of Havranek.

ENTERED:

Dated: March 13, 2000

Robert E. Ginsberg
United States Bankruptcy Judge

[1] Because the court finds that Havranek's conduct was not "willful," the court need not determine whether his conduct was "malicious" as well. *See e.g., America First Credit Union v. Gagle (In re Gagle)*, 230 B.R. 174 (Bankr.D.Utah 1999); *Aldus Green Co. v. Mitchell (In re Mitchell)*, 227 B.R. 45 (Bankr.S.D.N.Y.1998);. Nor does the court need to determine whether "willful and malicious" is a unified concept. *See e.g., Miller v. J.D Abrams, Inc. (In re Miller)*, 156 F.3d 598 (5th Cir. 1998); *Molina v. Seror (In re Molina)*, 228 B.R. 248 (9th Cir. BAP 1998).